

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>LOUIS SHURE</b>	:	DETERMINATION
	:	DTA NO. 819564
for Redetermination of a Deficiency or for Refund of	:	
New York State Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1995.	:	

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Petitioner, Louis Shure, 180 East End Avenue, New York, New York 10128, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law for the year 1995.

On May 11, 2004 and May 28, 2004, respectively, petitioner, by Theodore Levine, CPA, and the Division of Taxation, by Christopher C. O'Brien, Esq. (Margaret T. Neri, Esq., of counsel), consented to have this controversy determined upon the submission of documents without a hearing. All briefs were to be submitted by October 15, 2004, which date began the six-month period for the issuance of this determination. After due consideration of the record, Gary R. Palmer, Administrative Law Judge, renders the following determination.

***ISSUE***

Whether the Division of Taxation properly disallowed petitioner's claim for refund of New York State personal income tax for the year 1995.

***FINDINGS OF FACT***

1. Petitioner, Louis Shure, filed his 1995 New York State Personal Income Tax Return on April 28, 2000, on which he requested a refund of an overpayment of taxes withheld from his 1995 wages in the sum of \$8,064.00.

2. By letter from Alex Trigonis, a Tax Technician I employed by the Division of Taxation (“Division”), dated May 12, 2000, the Division denied petitioner’s request, offering the following explanation:

I have been asked to look into the problem with your 1995 request for refund.

. . . Section 687 of the New York State Tax Law does not allow this overpayment to be refunded. The deadline for filing for the refund or credit expired April 15, 2000, [sic] three years from the date the return was due.

3. On May 16, 2003, petitioner filed a request for a conciliation conference seeking to challenge the Division’s denial of his refund request. Petitioner, in his request, stated that his 1995 income tax return was filed after the three-year statute of limitations. Petitioner’s request was denied by conciliation order dated June 6, 2003. The order stated that since the request for conference had not been filed within two years of the mailing of the statutory notice, it was late filed and the request for a conciliation conference was denied.

4. On July 11, 2003, petitioner filed a petition with the Division of Tax Appeals contesting the denial of his request for a conciliation conference, stating that he “never received a statutory notice that his 1995 tax return was filed after the deadline expired” and therefore the statute “did not have a beginning date for the statute to run.”

5. On or about September 17, 2003 the Division of Taxation filed its answer to the petition wherein, *inter alia*, it affirmatively stated that the burden of proof is on petitioner to show that the refund denial at issue was erroneous or improper.

6. On December 4, 2003 the Division filed a motion for summary determination or, alternatively, dismissal of the petition, wherein it discussed the requirements of Tax Law § 689(c)(3) that “no petition (for a refund) shall be filed more than two years after the date of mailing of a notice of disallowance,” and asserting that because petitioner did not request a conciliation conference or petition for a hearing within two years of the date of the May 12, 2000 refund denial letter, the Division of Tax Appeals lacked jurisdiction to review the refund claim. It argued that there was no material issue of fact and that a determination in favor of the Division was mandated. The Division submitted no proof of mailing of the denial letter in support of its motion.

7. By order dated January 22, 2004, Administrative Law Judge Joseph W. Pinto, Jr. denied the Division’s motion on the grounds that it failed to establish that petitioner’s claim for refund was not timely, and failed to provide proof of mailing by certified or registered mail of its refund denial letter dated May 12, 2000, thereby leaving unresolved issues warranting a hearing.

8. On February 12, 2004 the Chief Administrative Law Judge granted the Division’s application for leave to file an amended answer. In its amended answer the Division discussed Tax Law § 687(a) in support of its contention that petitioner is not entitled to a refund of his 1995 personal income tax overpayment because his refund claim was filed in April of 2000, which is more than three years from the time the return was due, and more than two years from the time the tax was paid.

9. A consent to have the controversy determined on submission without hearing was executed by petitioner’s representative on May 11, 2004, and by the Division’s representative on May 28, 2004. This consent was filed with the Division of Tax Appeals on June 1, 2004.

Thereafter, on July 8, 2004, the Division filed certain documents that included the affidavit of

Mr. Trigonis. The Trigonis affidavit was sworn to on July 7, 2004, and stated that petitioner's original 1995 tax return is no longer available, but that the Department's Case and Resource Tracking System ("CARTS") includes records confirming that petitioner filed his 1995 personal income tax return on April 28, 2000, which return included a claim for the refund of an overpayment in the sum of \$8,064.00. The affidavit also stated that a refund denial letter was issued to petitioner on May 12, 2000 because he did not file a timely claim for a refund.

***SUMMARY OF THE PARTIES' POSITIONS***

10. Petitioner requests that his refund claim be allowed because for more than the past 15 years his physical and mental conditions have deteriorated due to his daily ingestion of potent pain medications that he requires to alleviate a disabling back condition. In 1995 petitioner was sued for divorce by his wife, which development caused its own level of increase in petitioner's depression, anxiety and despair. The combined effects of the divorce and the back condition have rendered him housebound and unable to function in any productive capacity. These circumstances have forced him to rely on others to meet his daily responsibilities and the delay in the filing of his 1995 income tax return is the result of his misplaced reliance on persons "who failed to follow through in a timely and responsible manner."

11. The Division contends that by operation of Tax Law § 687(a) and (i), where a claim for refund is filed within three years of the filing of the income tax return, the taxpayer's refund is limited to the amount of tax paid by the taxpayer within the three-year period immediately preceding the filing of the refund claim. Inasmuch as petitioner's 1995 withholding tax is, by operation of Tax Law § 687(i), deemed to have been paid by petitioner on April 15, 1996, no tax was paid within the three-year period immediately preceding the April 28, 2000 refund claim that may be refunded.

***CONCLUSIONS OF LAW***

A. Under Tax Law § 686(a) the New York State Comptroller may refund overpayments of income tax only during the applicable period of limitations and after the filing of a return.

The period of limitations is to be found in Tax Law § 687(a), which reads:

General - Claim for credit or refund of an overpayment of income tax shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed, within two years from the time the tax was paid. If the claim is filed within the three year period, the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim plus the period of any extension of time for filing the return . . . . If the claim is not filed within the three year period, but is filed within the two year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim . . . . Except as otherwise provided in this section, if no claim is filed, the amount of a credit or refund shall not exceed the amount which would be allowable if a claim had been filed on the date the credit or refund is allowed.

B. There is no dispute that the amount of income tax withheld from petitioner's 1995 wages exceeded his tax liability for that year, resulting in the overpayment he reported on his late filed return. However, Tax Law § 687(a) required that petitioner file his claim for refund within the later of three years from the time his return was filed or two years from the time the tax was paid. The only tax payments made for 1995 were the amounts withheld from his wages in that year. Under Tax Law § 687(i) any income tax withheld from the taxpayer during any calendar year is deemed to have been paid by him on April 15 of the following year. Petitioner's 1995 personal income tax return was due to be filed not later than April 15, 1996. His 1995 refund claim was incorporated as part of his 1995 income tax return which was filed on April 28, 2000. It follows that petitioner's refund claim was timely filed in accordance with Tax Law § 687(a) as having been filed within three years of the filing of his return.

C. Notwithstanding the timeliness of petitioner's refund claim, said claim was properly denied by the Division. Where, as here, the refund claim was made concurrently with the filing of petitioner's 1995 personal income tax return, Tax Law § 687(a) limits the amount of any refund to the amount of tax paid within the three-year period immediately preceding the date of the filing of petitioner's refund claim (*see, Matter of Petrovich*, Tax Appeals Tribunal, January 20, 2000). Since petitioner's payment of tax via withholding for the year at issue was deemed to have occurred more than three years before the April 28, 2000 filing of his claim for refund, Tax Law § 687(a) bars any refund to petitioner for the year at issue.

D. Petitioner urges that the periods of limitation relied upon by the Division to disallow his refund claim should be tolled due to his physical and mental disabilities and the misfeasance of the unnamed other persons who handled his affairs during 1995 and the years that followed. In *Matter of Insalaco* (Tax Appeals Tribunal, November 13, 2003), the Tribunal held that in construing the period of limitations of Tax Law § 687(a), there was no basis in law to extend such periods through the use of "non-statutory exceptions based on individual circumstances such as mental incompetence or disability." In *Insalaco*, the Tax Appeals Tribunal noted with approval the rejection by the Administrative Law Judge of that taxpayer's reliance on Internal Revenue Code ("IRC") § 6511(h) which provides for the suspension of the Federal statute of limitations for the filing of a claim for credit or refund of Federal income tax under IRC § 6511(a) for any period of an individual taxpayer's life during which he or she is unable to manage his or her financial affairs due to a medically determinable mental or physical impairment that can be expected to result in death, or has lasted for a continuous period of 12 months. The Tribunal observed that there is no parallel New York provision to IRC § 6511(h), and that the Federal statute has no applicability to Tax Law § 687(a).

In *United States v. Brockamp* (519 US 347, 136 L Ed 2d 818), the U.S. Supreme Court held that the time limitations set forth in IRC § 6511(a) for filing tax refund claims could not be extended for nonstatutory equitable reasons. It appears that the Congress enacted IRC § 6511(h), effective July 22, 1998, in response to *United States v. Brockamp (supra)*. It is the principle declared by the U.S. Supreme Court, rather than the action of the Congress in amending the Internal Revenue Code, that is binding on the Division of Tax Appeals.

E. The petition of Louis Shure is denied and the Division's notice of disallowance of petitioner's claim for refund is sustained.

DATED: Troy, New York  
January 6, 2005

/s/ Gary R. Palmer  
ADMINISTRATIVE LAW JUDGE